

REMARKS

In response to the Patent Office letter of August 29, 2005, the Applicant respectfully requests reexamination and reconsideration. To further the prosecution of this application, amendments have been made herein. The Examiner has allowed claims 1, 3-5, 7-12, 14-23, 26, 33-35, 40 and 46-49. Claims 27-30, 32, 36, 37, 39 and 41-45 had been rejected by the Examiner under 35 U.S.C. §103(a).

On page 2 of the Patent Office letter, the Examiner has requested further information regarding one of the listed citations. This is the Droll Yankees "Extending the Sanctuary Series...". This document in particular shows a RETRO FIT CAGE. This cage is made by the instant inventor and is owned by the present assignee of this pending application. This invention was not disclosed/published on the web or in a catalog more than one year prior to the filing date of the instant application. This document appeared in the assignee's catalog, and the catalog was available to the public on or about April 15, 2000, and was not available to the public prior to March 23, 2000.

On pages 3-6 of the Patent Office letter, the Examiner has presented a rejection of claims 27-30, 32, 36, 37, 39 and 41-45 under 35 U.S.C. §103(a) as being unpatentable over the Duncraft reference when taken in combination with U.S. Patent #5,558,040 to Colwell et al. It is noted that the Colwell patent is owned by the present assignee.

First, and with regard in particular to independent claims 27 and 36, the rejection of these claims along with any related dependent claims should now be moot in view of the fact that the claim limitations relating to the fastening member have now been introduced into both of these claims. This is the same limitation as found in, for example, allowed claim 1. Accordingly, both claims 27 and 36 now define a fastening member constructed and arranged to removably secure the base of the selective housing to the base of the seed holder. These claims also recite that the fastening member comprises a threaded plug that is adapted to removably connect, through a substantially centrally disposed aperture in said selective housing base, to the base of said seed holder. With these introductions into each of these claims, it should be now clear that claims 27 and 36, along with their dependent claims, should clearly be in condition for allowance.

In formulating the rejection, the Examiner has conceded that the Duncraft reference does not teach the claimed "clamp". For that teaching the Examiner is relying upon the clamp 85 disclosed in the Colwell et al. '040 patent. However, the clamp disclosed in this patent does not clamp about a seed holder but instead clamps about a rigid support pole, identified in the Colwell et al. '404 patent as the pole 19.

It is the applicant's position that the Examiner has not made out a *prima facie* case under 35 U.S.C. §103(a) in that there is clearly no teaching in either of the references that a clamp be disposed over a cover and about a seed holder. In this regard, the Examiner has taken the position that her proposed modification "is merely the substitution of an alternate equivalent vertical member taught by Colwell performing the same intended function". These so-called "vertical members" are not equivalent in that mainly in Colwell et al. there is nothing more than a support pole while in the present invention there is a hollow chamber for receiving bird feed. They do not at all perform the same function as alleged by the Examiner. Moreover, there is no hint or suggestion that a clamp be situated as proposed by the Examiner about a seed holder.

The other rejections of dependent claims set forth by the Examiner in the Office Action are now believed to be moot, particularly in view of the further amendments made to claim 32. Claim 32 remains as the only independent claim at this time that is at issue.

In order to clearly distinguish over the combination of references relied upon by the Examiner, claim 32 has also been significantly amended. The selective housing is now defined as having a circumferential side wall. The cylindrical seed housing is defined as arranged coaxially within the circumferential side wall. The cover is defined as including an aperture through which a portion of the seed holder extends. The cylindrical seed holder housing is now defined as having a top end that extends above the cover. The clamp is clearly defined as disposed about the seed holder cylindrical housing above the cover. With these amendments to claim 32, it is believed that claim 32 should be in condition for allowance and clearly patentably distinguishable over the combination of references cited by the Examiner, namely, the Duncraft and Colwell et al. references.

In view of the amendments made, and particularly in claims 27, 32 and 36, certain other claims have been canceled from the application. This includes claims 28, 29, 30 and 37.

With these amendments, it is now believed that all claims should be in condition for allowance.

CONCLUSION

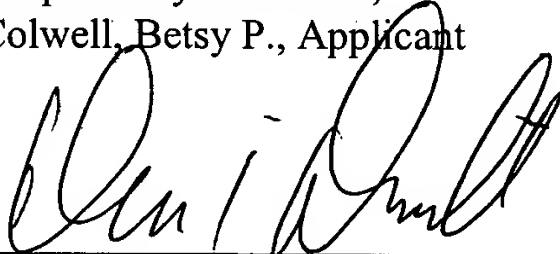
In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
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